

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

FILED

SEP 27 2006



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UNITED STATES OF AMERICA, \* CR 06-30038

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Plaintiff,

\*

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-vs-

\* ORDER AND OPINION

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\*

AARON MARSHALL,

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Defendant.

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Defendant filed a motion to suppress (Doc. 19) with a supporting memorandum (Doc.20).

The government filed its objection (Doc. 26) to the motion. U.S. Magistrate Judge Moreno conducted an evidentiary hearing on September 7, 2006, and filed and served a report and recommendations for disposition of the motion (Doc. 36). The Court has conducted a *de novo* review of the transcript of the hearing (Doc. 37), the transcript of the findings made on the record by the magistrate (Doc. 39), and all the files and records herein. I have also read all exhibits from the hearing which are filed as Doc. 28-1. There are two obvious errors in the transcript. References are made to the Indiana Health Service; the correct references are obviously to the Indian Health Service (IHS). I have also listened to the taped statement of the defendant. There is an obvious error in Doc. 39, page 19, line 16, where the word is "conscious", not "conscience." Defendant has filed objections (Doc. 40) to the recommendation of the magistrate and the objections have been considered.

The motion deals with alleged statements made by the defendant on May 8, 2006, and May 25, 2006, the obtaining of a buccal swab, as well as evidence taken on May 18, 2006, from a bedroom which the defendant used at his brother's house. I adopt the well reasoned and thorough findings and conclusions made by the magistrate in Doc. 39.

The objections should be overruled, the motion denied, and the report and recommendation accepted.

Now, therefore,

IT IS ORDERED, as follows:

- 1) The motion for suppression of evidence in the nature of statements (Doc. 19) is hereby denied in part and granted in part (as to alleged statements made by the defendant to SA Ramirez and tribal investigator Clifford during May 8, 2006, after SA Ramirez grabbed defendant's arm and told defendant to remain in the vehicle, which statements may, however, become admissible as impeachment evidence when and if defendant takes the stand and testifies contrary to his statements).
- 2) The objections (Doc. 40) of the defendant should be and are hereby overruled and the report and recommendations (Doc. 36) as well as the findings made by the magistrate (Doc. 39) should be and are hereby adopted.
- 3) The statements allegedly made on May 25, 2006, the buccal swab, the statements allegedly made before the defendant was restrained on May 8, 2006, and the evidence seized in the search of the bedroom are admissible in the government's case in chief.

Dated this 26<sup>th</sup> day of September, 2006.

BY THE COURT:

  
CHARLES B. KORNMANN  
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: 

DEPUTY

(SEAL)